IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 23796 of 2003(G)

PETITIONER:

1. C.M. JOHN, S/O. MATHAI,
   CHALAMADATHIL HOUSE, KIDANGOOR SOUTH P.O.,
   KOTTAYAM DISTRICT,
   WORKER C.L. FACTORY, KAROOR.

2. JOSEPH DEVASIA, CHEMMALA HOUSE,
   EDAPADI P.O., BHARANANGANAM, PALAI,
   DO. DO.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.PETER JOSE CHRISTO

RESPONDENTS:

1. THE JOINT REGISTRAR OF CO-OPERATIVE
   SOCIETIES, KOTTAYAM.

2. THE MEENACHIL RUBBER MARKETING AND
   PROCESSING CO-OPERATIVE SOCIETY
   LTD.NO.K.118, PALAI, REPRESENTED BY ITS
   SECRETARY.

3. THE SECRETARY TO GOVERNMENT
   CO-OPERATION DEPARTMENT, THIRUVANANTHAPURAM.

BY ADV. SRI.K.B.GANGESH FOR R2
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN FOR R1 AND R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/01/2007, ALONG WITH WPC NO. 35236 OF 2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:-

EXT.P1 TRUE COPY OF THE RESOLUTION NO.50 DT.28/12/79

EXT.P2 TRUE COPY OF THE LETTER DATED 24/2/1992

EXT.P3 TRUE COPY OF THE SOCIETY HAD ADOPTED RESOLUTION NO.1 DT.25/9.89

EXT.P4 TRUE COPY OF THE ORDER DATED 9.10.98 OF THE 1ST RESPONDENT

EXT.P5 TRUE COPY OF THE ORDER G.O.(RT) NO.299/2003/CO-OP DATED 07/06/2003.

RESPONDENT'S EXTS:-

EXT.R2(A) TRUE COPY OF THE AGREEMENT DATED 12/10/1985

EXT.R2 (B) TRUE COPY OF THE PAY REVISION ORDER DATED 25/11/1986

EXT.R2 (C) TRUE COPY OF THE ORDER DT.28/07/90 OF THE JOINT REGISTRAR

EXT.R2 (D) TRUE COPY OF THE ORDER EM(3)11824/92 DT.15/12/92

EXT.R2(E) TRUE COPY OF THE ORDER P141/93 DATED 15/06/1993

EXT.R2 (F) TRUE COPY OF THE SANCTION LETTER DT.28/09/81

EXT.R2 (G) TRUE COPY OF THE RELEVANT RESOLUTIONS DT.31/05/82

EXT.R2 (H) TRUE COPY OF THE RELEVANT RESOLUTIONS DT.13/06/83 AND 17/09/83.

\\TRUE COPY //

P.A TO JUDGE

J.M.JAMES, J.

- - - - - - - - - - - - - - - - - - - -

W.P.(C) Nos. 23796/2003 (G) and 35236/2003(T)

- - - - - - - - - - - - - - - - - - -

Dated this the 8th day of January, 2007

J U D G M E N T

The writ petitioners in both the writ petitions were the casual employees, as workers, of the second respondent Society from the year 1974. For clarity, I am referring to the documents as they appear in W.P(C) No.23796/2003. On different dates, 08/02/1978, 28/12/1979 and 26/10/1985, the second respondent passed repeated resolutions, requesting the Registrar, to regularise the service of the writ petitioners and others. However, no action had been taken. While so, the Government has passed a pay revision order dated 25/11/1986 bringing the same into effect from 01/04/1984. As per the above order, all the regular employees, who were in service on 01/04/1984, were entitled to get pay revision benefits. The writ petitioners continued to be casual workers and they were admittedly regularised with effect from 01/04/1985. The prayer of the writ petitioners is that, as they were in continuous service from 1974, though they were regularised only on 01/04/1985, they be given the benefits of pay revision along with the regular employees, who were in service from 1984.

2. The learned counsel for the writ petitioners also relied on Exhibits P4 and P5 orders passed by the Joint Registrar taking the stand that the writ petitioners are entitled to the benefits of pay revision order dated 25/11/1986, with effect from 01/04/1984.

3. Meanwhile, the approach of the second respondent Society has changed and they challenged Exhibit P5 order of the Joint Registrar before the Government, resulting in Exhibit P6 order, holding that the writ petitioners are not entitled for any benefit, as they were regularised only on 01/04/1985. This is under challenge by the writ petitioners, contending that the findings in Exhibit P6 by the Government are against different resolutions passed by the second respondent, as stated above. However, the learned counsel for the second respondent submits that the resolutions of the second respondent, as above, had been rejected by the Registrar, as per Exhibit R2(E) order dated 15/06/1993.

4. During the hearing it was brought to my notice, that a modification order of G.O.(P)101/86/Co-op, dated 25/11/1986, was passed by the Government on 18/08/1987 through G.O.(P) 45/87/Co-op. At paragraph (7), it is stated therein that:-

> "In this case of fresh recruits, who enters service on or after 01/04/1984, they will be deemed to have been in service as on 31/03/1984 for the limited purpose of calculation of Basic D.A payable to that incumbent and Basic D.A will be fixed based on the minimum of the pre-revision scale of pay for the post at 488 points on 31/03/1984 (Pay + FDA)".

5. Thus, it is clear that with the above modification order, the Government has brought in the employees, who were though regularised on 01/04/1985, as if they were in service as on 31/03/1984 and fixing the salary as directed above. In the above circumstances, the writ petitioners also come in within the pay revision of 25/11/1986 with the modification government order dated 18/08/1987. Thus all the benefits that are due to the writ petitioners have been granted by the modified G.O dated 18/08/1987. Hence, the contention of the writ petitioners that they were deprived of the benefits of the pay revision dated 25/11/1986 is not acceptable.

6. The counsel for the writ petitioners, however, submitted that all the benefits calculated as per the modified G.O dated 18/08/1987 had not been paid so far. The counsel for the second respondent has emphatically submitted that he has stated in

his counter that the benefits, as entitled, according to the modified pay revision order had been paid to the writ petitioners.

7. In the above facts situation, although Exhibit P6 order of the Government was passed against the writ petitioners, in the light of the payment of the benefits, according to the modified G.O dated 18/08/1987, Exhibit P6 order is not at all effective and the same do not affect benefits which are available and extended to the writ petitioners. However, I make it clear that, in any event, if the amount, as calculated, according to the modified G.O dated 18/08/1987 is not paid so far, the writ petitioners shall approach the second respondent, within two weeks from today and produce a copy of this judgment. In that event, the benefits shall be paid to them according to their entitlement.

Both the writ petitions are closed as above.

(J.M.JAMES)
Judge

ms